

SERVED: December 1, 1995

NTSB Order No. EA-4408

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 20th day of November, 1995

DAVID R. HINSON,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket No. CP-14
v.	)	
	)	
ALAN G. LARSON,	)	
	)	
Respondent.	)	
	)	

**OPINION AND ORDER**

Respondent, appearing pro se<sup>1</sup>, has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty. The law judge's decision, issued at the conclusion of an evidentiary hearing held on February 27 and 28, 1995, affirmed the violations of the Federal Aviation Regulations ("FAR")

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<sup>1</sup> Respondent was represented by counsel in the proceedings before the law judge.

alleged by the Administrator in an order dated October 17, 1994. Respondent was assessed a civil penalty of \$13,000, a modification of the \$15,000 civil penalty sought by the Administrator.

The Administrator's order of assessment of a civil penalty was predicated on numerous flights conducted in September of 1994, during which respondent allegedly violated the FARs.<sup>2</sup> Specifically, at his hearing, respondent was found to have operated as pilot in command of a Douglas Model DC-3 aircraft, N32AL, on more than 50 flights without a qualified second-in-command, in violation of FAR 91.9(a).<sup>3</sup> Respondent was also found to have violated FAR 43.12(a) for altering an entry in the aircraft's logbook, indicating that a required 25-hour check had been completed when, in fact, it had not.<sup>4</sup> Finally, respondent

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<sup>2</sup> The Administrator's complaint is attached.

<sup>3</sup> 14 C.F.R. 91.9 provides, in part, as follows:

**§ 91.9 Civil Aircraft flight manual, marking, and placard requirements.**

(a) Except as provided in paragraph (d) of this section, no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry.

<sup>4</sup> 14 C.F.R. 43.12 provides, in part, as follows:

**§ 43.12 Maintenance records: Falsification, reproduction, or alteration.**

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false entry in any record or report that is required to be

was found to have violated FARs 91.7(a) and 91.13(a) for attempting to take off with fuel spilled within the cargo area, with an inoperative magneto on the left engine, and contrary to a required placard prohibiting the carriage of passengers, with passengers aboard.<sup>5</sup>

On appeal, respondent does not contest the findings of the law judge that he violated FARs 91.7(a), 91.9(a), 91.13(a) and 43.12(a), as alleged by the Administrator. Instead, respondent raises, for the first time in this proceeding, a challenge to the Administrator's authority to sanction him for the conduct alleged in the complaint, claiming that as to a majority of the subject flights, the aircraft involved was "operated under the provisions of 'Public Aircraft' and as such [was] not subject to violations (...continued)

made, kept, or used to show compliance under this part;

(2) Any reproduction, for fraudulent purpose, of any record or report under this part; or

(3) Any alteration, for fraudulent purpose, of any record or report under this part.

<sup>5</sup> 14 C.F.R. 91.7 provides, in part, as follows:

**§ 91.7 Civil aircraft airworthiness.**

(a) No person may operate a civil aircraft unless it is in an airworthy condition.

14 C.F.R. 91.13 provides, in part, as follows:

**§ 91.13 Careless or reckless operation.**

(a) Aircraft operations for the purpose of air navigation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

of the Federal Aviation Regulations." Respondent's Brief at 1.

Accordingly, respondent asks that we dismiss the law judge's Decision and Order for "non-jurisdiction". For the reasons set forth below, we deny the appeal.

Respondent's belated jurisdictional claim is unavailing. In the first place, respondent admitted the allegation in the Administrator's complaint that the aircraft associated with his FAR violations was a civil aircraft.<sup>6</sup> Having secured that admission from respondent, the Administrator was not obligated to put on any evidence on the matter, and he must be deemed to have met his burden of proof in establishing that the subject charges involved a civil aircraft.

In the second place, contrary to the respondent's apparent belief, the letter (written after the hearing from someone purporting to be familiar with the particulars of the flights) attached to his one-page appeal brief does not establish that the flights were made on a public aircraft; that is, an aircraft

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<sup>6</sup> Count I, paragraph 3 of the Administrator's complaint reads:

"During all operations mentioned herein, civil aircraft N32AL, formally having registration number N132AL, a Douglas Model DC-3 aircraft, had a U.S. airworthiness certificate, and it was a large, multiengine aircraft requiring a minimum flight crew of a pilot and a co-pilot."

In his answer to count I, paragraph 3 of the Administrator's complaint, respondent stated:

"Respondent admits the allegations contained in paragraph 3 of the Administrator's Complaint, except that the respondent specifically denies that all operations, as stated in the Administrator's Complaint, required a minimum flight crew of a pilot and a co-pilot."

committed exclusively "in the service of any government" (see Section 101 of the Federal Aviation Act of 1958, as amended). Rather, it indicates essentially no more than that the flights were paid for by the U.S. Government, a circumstance that compels no conclusion as to the civil or public status of the aircraft on which the purchased flights were flown.<sup>7</sup>

Finally, respondent's appeal mistakenly assumes that if the aircraft he operated was a public aircraft, dismissal of the charges against him would be required. He is mistaken. It is well settled that many of the FARs apply to both civil and public aircraft. See, e.g., Administrator v. DeChant, 2 NTSB 2183 (1976) and Administrator v. Martin, NTSB Order No. EA-3423 (1991). In the circumstances of this case, however, litigated on the basis that no dispute existed as to the civil status of the aircraft, we have no occasion to determine which of the charges might not be sustainable if the flights had involved a public aircraft or how the dismissal of any such charges might affect the amount of the civil penalty the Administrator assessed.

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<sup>7</sup>We agree with the Administrator that the respondent's submission of the letter constitutes an improper attempt to introduce new evidence at the appeal stage of the proceeding.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied, and
2. The decision of the law judge and the order of the Administrator are affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT and GOGLIA, Members of the Board, concurred in the above opinion and order.